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LONDON AND PARIS FOR AFRICA WATCHERS

E.O. 12958: N/A

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SUBJECT: KENYA'S ELECTORAL CRISIS - INTERNATIONAL HUMAN RIGHTS BODIES JOIN (OR DRAGGED INTO) THE FRAY

¶1. Summary: The post-election violence that has killed over 700 people and displaced an estimated 250,000 more has drawn the attention of international human rights groups and institutions. Human Rights Watch currently has a research team in country to collect information and analyze events and has issued a press release accusing the opposition Orange Democratic Movement of organizing ethnic violence in the Rift Valley. The UN High Commissioner for Human Rights issued a statement calling on the Kenyan government to conduct an impartial investigation of killings. The International Criminal Court (ICC) has also been drawn into the fray. Both the government and the Orange Democratic Movement (ODM) have called on the ICC to investigate alleged crimes against humanity, but it is unlikely that either request will result in an ICC case. Nevertheless, the international attention reinforces Kenyans' hopes that outside bodies can help bring resolution to the current ruinous stalemate. End Summary.

¶2. Human Rights Watch (HRW) has had a research team in country for the past ten days. They are focusing on the post-election violence, particularly in Kisumu, Eldoret and Nairobi. The team is due to leave the country this week. Based on its investigations, HRW issued a statement on January 24 accusing some members of the ODM of organizing post-election violence targeting Kikuyu in the Rift Valley. HRW also stated that more attacks on Kikuyu are planned in Eldoret, the scene of some of the most brutal violence in Rift Valley. Prior to that, the team relayed to poloff that it had initial indications that the Administration Police were involved in killing 43 protesters in Kisumu on December 31. HRW may send a larger team to more fully investigate its preliminary findings. HRW's press releases have gotten extensive coverage in Kenyan media. We have requested to Human Rights Watch to make available to us their evidence.

¶3. The UN High Commissioner for Human Rights, Louise Arbour, issued a press release on January 21 in which she reiterated her deep concern about the continued violence and reports of grave human rights abuses in Kenya. She also condemned the use of live ammunition by police in responding to protests. She called on the Kenyan Government to abide by its human rights obligations and called for an impartial and expeditious investigation to determine responsibility for the killings. She called for anyone found responsible to be brought to justice.

¶4. Kenyan politicians are attempting to drag another human

rights body, the International Criminal Court, into the political arena. The ODM's Secretary General, Professor Anyang Nyong'o, announced that he has written to the ICC's chief prosecutor asking him to investigate alleged crimes against humanity and state-sponsored terrorism allegedly perpetrated by the Kenyan government. This announcement appears to be aimed more at the court of public opinion than a court of law. The ICC's statute does allow the court to receive information on crimes within the jurisdiction of the court from individuals or NGOs. However, the ICC only has jurisdiction over cases where a state is unwilling or genuinely unable to carry out the investigation or prosecution. The ICC is deferential to states' attempts to investigate crimes. Therefore, the ICC is unlikely to find it has jurisdiction if the Kenyan government initiates even the most mild investigation into the subject of ODM's complaint.

¶15. After Nyong'o's statement, Justice Minister Martha Karua countered that the government is also considering filing a request for investigation at the ICC for genocide. However, if the government makes such a request, an ICC genocide case is equally unlikely. Certainly, terrible crimes have been (and are still being) committed in opposition-dominated areas. But the crime of genocide by definition requires state action, so the ICC would not have jurisdiction to consider accusations that non-state actors (in this case, opposition elements) engaged in genocide.

¶16. COMMENT: Ordinary Kenyans give much credit to the international community (writ large) as an agent for positive change. The interest and attention that international human rights groups are paying to the current human rights situation has reinforced this belief among Kenyans. Kenyans

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see this international attention as concurrent to international facilitation efforts, which they hope will lead to a resolution of the current crisis and to a return to normalcy.
RANNEBERGER